

Appeal from a decision of the Colorado State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease C 31300.

Affirmed.

1. Oil and Gas Leases: Generally--Oil and Gas Leases: Reinstatement  
--Oil and Gas Leases: Termination

When the lessee fails to pay rentals on or before the anniversary date of the lease, and no oil or gas in paying quantities is being produced on the leased premises, the lease shall automatically terminate by operation of law pursuant to 30 U.S.C. § 188(b) (1982). The Secretary may reinstate the lease, pursuant to 30 U.S.C. § 188(b) (1982), if the full rental is paid within 20 days of the lease anniversary date and the failure to timely pay the rental was justifiable or not due to a lack of reasonable diligence. When the failure to timely pay the rental was due to the lessee's own neglect, the failure to timely pay is neither justifiable nor demonstrative of reasonable diligence. Therefore a petition for reinstatement under 30 U.S.C. § 188(c) (1982) must be rejected.

APPEARANCES: Bruce A. Miller, Esq., Metairie, Louisiana, for appellant.

#### OPINION BY ADMINISTRATIVE JUDGE MULLEN

Edgar B. Stern appeals from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated September 12, 1984, rejecting his petition for reinstatement of oil and gas lease C 31300.

Oil and gas lease C 31300 was issued to appellant, effective July 1, 1981. The terms of the lease provided that the lease would run for a term of 10 years from the effective date. Paragraph (c) of the lease provides, in pertinent part, that "[i]f there is no well on the leased lands capable of producing oil and gas in paying quantities, the failure to pay rental on or before the anniversary date shall automatically terminate the lease by

operations of law." Section 31(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1982), provides that when a lessee fails to pay rentals on or before the anniversary date of the lease, and where there is no well capable of producing oil or gas in paying quantities on the leased premises, the lease shall automatically terminate by operation of law.

On August 14, 1984, BLM notified appellant that his lease had terminated as of July 1, 1984, because he had failed to timely pay the annual rental. BLM also informed appellant of his right to petition for reinstatement of the lease pursuant to 30 U.S.C. § 188(c) (1982) (class I reinstatement) and pursuant to 30 U.S.C. § 188(d), (e) (1982) (class II reinstatement). The lease termination notice set forth the conditions for reinstatement under both class I and class II. 1/

1/ The lease termination notice outlined the reinstatement conditions as follows:

"I. Class I (30 U.S.C. 188(c); 43 CFR 3108.2-1(c))

"Your lease may be reinstated under these provisions if: (a) the rental is received in this office within 20 days after the anniversary date of the lease and it is shown to the satisfaction of the authorized officer that failure to pay was either justifiable or not due to a lack of reasonable diligence; and, (b) that a petition for reinstatement, together with the required rental and a \$ 25.00 filing fee, is filed in this office within 15 days after receipt of this Notice; and, (c) that a new oil and gas lease has not been issued for any of the lands included in the terminated lease. Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. If these conditions are met, your lease can be reinstated with the original lease terms and conditions, effective on the date of termination.

"If one or more of the above conditions are not met, your lease may be eligible for a Class II reinstatement. However, to qualify for a Class II reinstatement, the following conditions must be met.

" II. Class II (30 U.S.C. 188(c) and (e); Sec. 401, 97-451)

"Your lease may be reinstated under these provisions if: (a) the rental is received in this office within 20 days after the anniversary date of the lease, and it is shown to the satisfaction of the authorized officer that failure to pay on the anniversary date was due to inadvertence, or, if the rental is not received in this Office within 20 days after the anniversary date of the lease, it is shown to the satisfaction of the authorized officer that failure to pay was either justifiable or not due to a lack of reasonable diligence or due to inadvertence; and, (b) that a petition for reinstatement, together with the rental and royalty due from the date of termination payable at the new rates set out below, is filed in this office within 60 days after receipt of this Notice; and, (c) that a new oil and gas lease has not been issued for any of the lands included in the terminated lease.

"If these conditions are met and you wish to petition, the requirements for reinstatement under Class II are as follows:

"1. You must submit a reinstatement processing fee of \$500.00; and,

"2. You must submit the new noncompetitive lease rental rate of \$ 5.00 per acre or fraction thereof per year and agree to the new royalty rate of 16 2/3 percent; and,

On July 5, 1984, appellant tendered his rental payment and on August 30, 1984, appellant filed a petition for class I reinstatement. In the petition for reinstatement, counsel for appellant states that:

The anniversary date of the lease renewal was July 1, 1984. Although our check on behalf of Mr. Stern was not sent until July 3, 1984, we feel that our timely failure to pay was justifiable, and in the alternative, not due to lack of reasonable diligence. [2/]

Mr. Stern's business affairs are conducted through his office in New Orleans. The person handling this particular aspect of Mr. Stern's affairs terminated his employment without briefing me, his successor, on Mr. Stern's oil and gas leases. When the invoice came to our office, I had to first identify it as belonging to Mr. Stern. I did this with dispatch and then requested my secretary to prepare a check in payment of rentals. However, due to a miscommunication or misunderstanding, my memorandum to prepare the check was mislaid until July 3, when it was discovered in a stack of "paid" bills. We consulted the check register, determined that it had not been paid, and sent a check to you immediately. We deal with reams of paperwork each day, and while I am not offering this as an excuse, perhaps it does explain how one item can become temporarily lost, despite our best efforts.

[1] The grant of a class I reinstatement is governed by 43 CFR 3108.2-1(c), which provides:

(c)(1) Except as hereinafter provided, the authorized officer may reinstate a lease which is terminated for failure to pay on or before the anniversary date the full amount of rental due, provided that:

(i) Such rental was paid or tendered within 20 days after the anniversary date; and

(ii) It is shown to the satisfaction of the authorized officer that the failure to timely submit the full amount of rental

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fn. 1 (continued)

"3. You will agree to pay the cost of publishing a Notice of Proposed Reinstatement in the Federal Register, for which you will be billed.

"If all these requirements are met, your lease can be reinstated with the amended terms and conditions, effective on the date of termination." (Emphasis in original)

2/ Effective Aug. 22, 1983, the regulations were revised to provide that the rental payment is "timely filed" where it is received within 20 days of the anniversary date and the remittance is postmarked on or before the anniversary date. 43 CFR 3108.2-1(a), 48 FR 33673 (July 22, 1983). However, this cannot avail appellant, as the remittance was clearly not transmitted until after the anniversary date.

due was either justified or not due to a lack of reasonable diligence on the part of the lessee; and

(iii) A petition for reinstatement, together with a nonrefundable filing fee of \$ 25 and the required rental, including any back rental which has accrued from the date of the termination of the lease, is filed with the proper BLM office within 15 days after receipt of Notice of Termination of Lease due to late payment of rental. The Notice of Termination shall be sent only if the rental is actually paid.

The applicable regulation, 43 CFR 3108.2-1(c) (2), provides: "The burden of showing that the failure to pay on or before the anniversary date was justifiable or not due to a lack of reasonable diligence will be on the lessee." E.g., Leo M. Krenzler, 82 IBLA 205, 207 (1984); Arthur F. Hovey, 79 IBLA 148, 149 (1984). If the lessee has paid the full rental within 20 days after the lease anniversary date, and the lessee shows that the failure to pay on or before the anniversary date was justifiable or not due to lack of reasonable diligence, then the Department may, under certain circumstances, reinstate the lease, pursuant to 30 U.S.C. § 188(c) (1982) and 43 CFR 3108.2-1(c). E.g., Leo M. Krenzler, supra; Kay Fink, 81 IBLA 381, 382 (1984); Arthur M. Solender, 79 IBLA 70, 72 (1984).

In the statement of reasons for appeal, appellant specifically requests reinstatement under "P.L. 91-245, Class I Reinstatement [30 U.S.C. 188(c)]" and contends that "[n]o harm has been suffered by the government, and the Secretary should be satisfied that there was no employee misconduct, based on the facts alleged in the original petition."

When the failure to pay the anniversary rental on time is due to negligence, forgetfulness, or inadvertence, the failure is not justifiable. Leo M. Krenzler, supra at 209; Eleanor L. M. Dubey, 76 IBLA 179 (1983). Although late payment of an annual rental may be considered justifiable if the untimeliness was proximately caused by circumstances outside the lessee's control at or near the anniversary date of the lease, Leo M. Krenzler, supra at 207; William F. Branscome, 81 IBLA 235, 237 (1984), here the untimeliness was clearly within the control of the appellant's agent. The stated reason for the failure to submit the rental in a timely manner was "my memorandum to prepare the check was mislaid until July 3, when it was discovered in a stack of "paid bills." Appellant has failed to carry his burden of proving that his failure to timely pay the required rental was justifiable or not due to a lack of reasonable diligence. We therefore conclude that appellant's petition for class I reinstatement was properly rejected. Harry L. Bevers, 84 IBLA 158 (1984).

BLM properly advised appellant in the notice of termination that a reinstatement petition may be filed under 30 U.S.C. § 188(d), (e) (section 401 of the Federal Oil and Gas Royalty Management Act of 1982), which authorizes a class II reinstatement under certain conditions where the failure to tender payment in a timely manner was due to inadvertence. However, appellant did not petition for reinstatement under that provision. Therefore, we need not address that issue.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Edward W. Stuebing  
Administrative Judge.

